

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Order Instituting Investigation on the Commission's Own Motion Into the Operations and Practices of Andy's Ultimate Limousines, Inc., a California Corporation, doing business as The Ultimate Limousine (PSG-11646-P), and A.L.S., a California Corporation, doing business as Andy's Limousine Service Transportation (PSG 16218-B) and its President Andrew Wagner, and Vice President Dannette Wagner, to determine whether they have violated the laws, rules and regulations governing the manner in which charter-party carriers conduct operations and whether they are no longer fit to continue to conduct passenger transportation service.

Respondents

FILED
PUBLIC UTILITIES COMMISSION
JULY 8, 2004
SAN FRANCISCO
I.04-07-004

ORDER INSTITUTING INVESTIGATION

The California Public Utilities Commission [Commission or CPUC] regulates intrastate passenger carrier transportation operations on the public highways pursuant to the California Constitution (Article XII), by Public Utilities (Pub. Util.) Code Sections 1031 et seq., the Passenger Charter-Party Carriers' Act (Pub. Util. Code Sections 5351, et seq.), and Commission General Orders [G.O.'s] 115-F, 157-C, and others. These statutes and regulations require passenger carriers, among other things, to maintain proof of adequate public liability and property damage (PL & PD) insurance; to maintain accurate records; to establish reasonable fitness to conduct their passenger transportation service; and to operate safely and in compliance with Commission regulations and the California Vehicle Code (CVC). These regulations impose specific requirements on charter-party carriers, which are designed to promote carrier and public safety.

These regulations further require that charter-party carriers comply with the CVC, participate in the Department of Motor Vehicles (DMV) "Pull Notice Program", ensure that only properly qualified, licensed drivers operate its vehicles, and comply fully with safety regulations contained in Title 13 of the California Code of Regulations (13 CCR). Further, these regulations require charter passenger carriers to establish reasonable fitness and financial responsibility to conduct their passenger transportation services.

The Consumer Protection and Safety Division (CPSD or Staff) advises us that it initiated an investigation into the business and operational practices of Andy's Ultimate Limousines, Inc., a California Corporation, doing business as (dba) The Ultimate Limousine (Ultimate Limousine) -TCP 11646-P; A.L.S. a California Corporation dba Andy's Limousine Service Transportation (Andy's Limousine) – TCP 16218-B; and their officers, Andrew Richard Wagner (President) and Dannette Wagner (Vice-President). Ultimate Limousine holds a Class P charter-party permit, originally issued on April 13, 1998, and renewed on June 29, 2001. Andy's Limousine holds a Class B charter-party certificate, issued on July 14, 2003.

Staff's investigation into the operations of Respondents disclosed numerous alleged violations of the Passenger Charter-Party Carriers' Act, and of Commission rules and regulations, including operations during period of suspension (April 25, 2002 through July 14, 2002), in violation of Pub. Util. Code Sections 5379 and 5391, and Commission G.O. 115-F. The investigation further disclosed that Respondents may have also violated Sections 5371 and 5374 of the Pub. Util. Code, and the Commission GO 157-C. On July 18, 2003, Staff served Andrew Richard Wagner Citation Forfeiture F-5121, with penalty in the amount of \$10,000, citing violations of the Pub. Util. Code and G.O. 157-C. Wagner signed Form 2 denying the Citation on July 18, 2003, stating that he has corrected all those violations, and therefore should not be penalized for violations that occurred in the past. On October 28, 2003, Staff conducted a follow-up investigation and found that Ultimate Limousine had not corrected some of the violations cited in Citation Forfeiture F-5121.

Staff investigation further disclosed that Andy's Limousine allegedly violated GO 115-F, which requires a charter-party carrier to maintain and continue in effect evidence of public liability and property damage insurance.

Staff has therefore presented to the Commission the alleged violations, and requests that the Commission institute a formal investigation into the operations and practices of Ultimate Limousine (PSG-11646-P) and Andy's Limousine (PSG-16218-B), and their officers, Andrew Richard Wagner and Dannette Wagner.

I. LICENSE HISTORY

Ultimate Limousine

On April 13, 1998, Ultimate Limousine was issued a Class P Charter-Party permit. Passenger charter-party authority may be renewed on a triennial basis upon submission and approval of a renewal application. The carrier filed a renewal application on April 3, 2001, and the permit was renewed on June 29, 2001. Commission License Section records show various suspensions of Ultimate Limousine's operating authority including as relevant to staff's investigation, a suspension from April 25 to July 15, 2002, for failure to maintain evidence of public liability and property damage (PL & PD) insurance coverage on file with the Commission. An Order of Suspension was mailed via first class mail to the carrier's address of record. On July 15, 2002, the current PL & PD certificate of insurance was filed and recorded by the Commission, and Ultimate Limousine's permit was reinstated effective that same day.

Andy's Limousine

On July 14, 2003, Andy's Limousine was issued a Class B charter-party certificate. Passenger charter-party authority may be renewed on a triennial basis upon submission and approval of a renewal application. The certificate will expire on July 14, 2006. Commission License Section records show that Andy's Limousine declared under penalty of perjury that its drivers operate vehicles with a seating capacity of 16 persons or

more, and that Andy's Limousine will comply with the federal drug testing requirements for those drivers

II. ENFORCEMENT HISTORY

Ultimate Limousine (TCP 11646-P) does not have prior violation history. However, its CEO, Andrew Richard Wagner (Wagner), did have the following violation history when he conducted passenger transportation business as an individual doing business as The Ultimate Limousine (TCP 4433-P/B).

A. On March 8, 1989, Wagner was issued a field citation forfeiture # 21FF-001 for operating as a charter-party carrier without Commission authority. Wagner was fined \$560. Wagner paid the fine on the day the citation was served.

B. On August 11, 1992, the Commission signed an Order Instituting Investigation (OII) # 92-08-010, which ordered an investigation into the operations and practices of Wagner to determine:

- If carrier failed to maintained adequate liability insurance protection in effect and evidence of coverage on file with the Commission.
- If carrier operated as a charter-party carrier without having adequate liability insurance protection in effect and on file with the Commission.
- If carrier operated during suspension and after revocation of authority.
- If carrier failed to comply with workers' compensation insurance requirements.
- If carrier failed to produce records upon request.
- If carrier failed to issue and maintain transportation records which show all required information.
- If carrier failed to display required identification on vehicles.
- If carrier operated vehicles of greater length than authorized by permit issued pursuant to Section 5384(b).
- If carrier failed to register interstate operations.
- If carrier failed to pay required fees.
- Whether carrier's authority should be cancelled, revoked, or suspended, or if fine should be imposed.
- Whether carrier should be order to cease and desist from unlawful operations.

In March 1998, Commission's decision D. 9803064 was issued dismissing the docket due to no activity.

- C. On March 31, 1994, the Los Angeles City Attorney's office filed a criminal complaint against Wagner. Wagner was convicted of one count of operating without Commission authority¹, and one count of violating Section 17500 of the Business and Professions Code (false advertising).

III. THE INVESTIGATION

CPSD's investigation specifically alleges 1,480 violations of the Pub. Util. Code, the CVC, 13 CCR, G.O.157-C, and other Commission rules and regulations. The nature of these offenses, their counts, and the resulting potential fines include the following:

A. Operated After Suspension of Permit

Pub. Util. Code Section 5379 provides that "no passenger charter-party carrier shall operate over any public highway in this State without a valid certificate or permit in force from the Commission authorizing such operations". Staff's investigation disclosed that on April 25, 2002, Ultimate Limousine's Class P Charter Party Permit was suspended for failure to maintain evidence of public liability insurance coverage on file with the Commission. Ultimate Limousine's records disclose that the carrier continued to operate after the suspension of its operating permit, in violation of Section 5379. Staff's investigation further disclosed that Ultimate Limousine conducted approximately 1,350 trips between May 1, 2002 and July 14, 2002, while its authority was suspended for failure to maintain evidence of liability insurance on file with the Commission.

Sections 5378(b) and 5415 authorize the Commission to impose a penalty of up to \$5,000 per violation. At 1,350 alleged violations, Respondents could be held jointly liable for a total fine of up to \$6,750,000.

¹ The complaint incorrectly cited Pub. Util. Code Section 5414.5. The correct Section for "Operation without Commission Authority" is 5379.

B. Operating Without Proper Insurance Coverage

According to Section 5391 and Commission G.O. 115-F, a carrier must maintain evidence of public liability and property damage insurance coverage in effect and on file with the Commission. In this case, Respondents failed to maintain the required evidence of public liability and property damage insurance coverage encompassing the period from April 25, 2002 through July 14, 2002 (81 days).

Sections 5378(b) and 5415 authorize the Commission to impose a penalty of up to \$5,000 per violation. At 81 alleged violations, Respondents could be held jointly liable for a total fine of up to \$405,000.

C. Failed To Enroll Drivers in Mandatory Alcohol and Controlled Substance Testing Certification Program.

Under Pub. Util. Code Section 5374 (a)(2) the Commission shall not issue or renew a permit unless the applicant “provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission pursuant to Section 1032.1.” Commission’s G.O.157-C, Part 10 provides in part “All charter-party carrier applicants (new and renewal) who propose to employ any driver who will operate a vehicle having a seating capacity of 15 persons or less, including the driver, must provide for a mandatory controlled substance and alcohol testing certification program for those drivers as required by this G.O. unless all such drivers are already covered by federal testing regulations. Charter-party carriers who employ any driver who operates a vehicle with a seating capacity of 16 persons or more, including the driver, must comply with the federal regulations concerning controlled substance and alcohol testing for those drivers.”

The initial investigation disclosed that on and between May 1, 2002, and August 31, 2002, Ultimate Limousine failed to enroll approximately 41 employee-drivers in a mandatory alcohol and controlled substance testing certification program, and to conduct pre-employment alcohol and controlled substance tests.

The follow-up investigation disclosed that between September 1, 2003, and October 15, 2003, Ultimate Limousine again failed to enroll at least 8 employee-drivers in a

mandatory alcohol and controlled substance testing certification program, and to conduct pre-employment alcohol and controlled substance tests.

Sections 5378(b) and 5415 authorize the Commission to impose a penalty of up to \$5,000 per violation. At 50 alleged violations, Respondents could be held jointly liable for a total fine of up to \$250,000.

D. Failure To Enroll Drivers in DMV Pull Notice Program

Pursuant to Pub. Util. Code Section 5381 and G.O.157-C, Part 5.02, every passenger charter-party carrier must enroll its drivers into the DMV Pull Notice Program, pursuant to CVC Section 1808.1. This program tracks and monitors the driver license status of an employee/driver and reports to the employer if the driver's driving privilege has been suspended or revoked. The investigation disclosed that on and between May 1, 2002 and August 31, 2002, Ultimate Limousine failed to enroll, or to timely enroll at least 17 employee-drivers in the DMV's Employer Pull Notice Program.

The follow-up investigation disclosed that between September 1, 2003 and October 15, 2003, Andy's Limousine again failed to enroll at least 6 employee-drivers in the DMV's Employer Pull Notice Program.

Sections 5378(b) and 5415 authorize the Commission to impose a penalty of up to \$5,000 per violation. At 23 alleged violations, Respondents could be held jointly liable for a total fine of up to \$115,000.

E. Engaged Drivers Without Proper California Driver License

G.O.157-C, Part 5.01 provides that every driver of a charter-party vehicle shall be licensed as required under the CVC and shall comply with the driver provisions of the Motor Carrier Safety Sections of 13 CCR. CVC Section 15250 provides in part that "No person shall operate a commercial motor **vehicle** unless that person has in his or her immediate possession a valid commercial driver's license of the appropriate class."

The investigation disclosed that on and between May 1, 2002 and August 31, 2002, Ultimate Limousine employed at least 20 employee-drivers that did not possess the proper California driver license (CDL) to drive carrier's buses.

The follow-up investigation disclosed that between September 1, 2003 and October 15, 2003, Ultimate Limousine and Andy's Limousine continue to employ at least 15 employee-drivers that did not possess the proper CDL to drive carrier's buses.

Sections 5378(b) and 5415 authorize the Commission to impose a penalty of up to \$5,000 per violation. At 35 alleged violations, Respondents could be held jointly liable for a total fine of up to \$175,000.

F. Failed To Report All Vehicles in Its For-Hire Operations

G.O. 157-C, Part 4.01 provides that every carrier shall maintain on file with the Commission an equipment list of all vehicles (owned or leased) in use under each certificate and permit. The information for each vehicle shall include the license plate number, manufacturer, model year, vehicle identification number (V.I.N.), seating capacity, description of body type or model designation, and whether the vehicle is leased or owned. Additions and deletions to the equipment list shall be filed within ten days of the date the vehicle is put into or pulled out of service. Upon written notification from carrier of any new additions of vehicles with seating capacity of more than 10 passengers, License Section immediately notify the California Highway Patrol (CHP) so that it can schedule a safety inspection of the carrier's vehicles and terminal. This requirement is also stated on the carrier's operating authority.

The investigation disclosed that on and between May 1, 2002 and August 31, 2002, Ultimate Limousine failed to report at least four vehicles with seating capacities of more than 15-passengers to the Commission; and under-reported the seating capacity of a fifth vehicle. Staff alleges that Wagner has failed to report to the Commission all equipment he has placed into passenger service, thereby preventing the Commission from accurately informing the CHP of all equipment required to be inspected by the CHP.

The follow-up investigation disclosed that between September 1, 2003 and October 15, 2003, Ultimate Limousine again failed to timely report at least 3 vehicles used in its operations to the Commission.

Sections 5378(b) and 5415 authorize the Commission to impose a penalty of up to \$5,000 per violation. At 8 alleged violations, Respondents could be held jointly liable for a total fine of up to \$40,000.

G. Operated Vehicles with Larger Seating Capacities than Authorized by Its Charter-Party Permit

Pub. Util. Code Section 5371 provides that “No charter-party carrier of passengers ... shall engage in transportation services made subject to this chapter without first having obtained from the commission a certificate that public convenience and necessity require the operation, except that certain specific transportation services as defined in Section 5384 may be conducted under authority of a permit issued by the commission.”

Ultimate Limousine’s charter-party carrier permit, issued pursuant to Pub. Util. Code Section 5384 (b), authorizes the operation of only vehicles under 15-passenger seating capacity. This requirement is also stated on the carrier’s charter-party permit.

The investigation disclosed that on and between May 1, 2002 and August 31, 2002, Ultimate Limousine operated at least 5 vehicles with seating capacities of more than 15-passengers without the proper charter-party authority.

Sections 5378(b) and 5415 authorize the Commission to impose a penalty of up to \$5,000 per violation. At 7 alleged violations, Respondents could be held jointly liable for a total fine of up to \$35,000.

H. Failed To Issue and Maintain Transportation Documents Which Show All Required Information

G.O.157-C, Part 3.01 provides in part that Class A and Class B charter-party carriers, as defined in Pub. Util. Code Section 5383, and carriers holding permits under

Pub. Util. Code Section 5384(b) shall provide transportation only on a prearranged basis. For each prearranged trip, the driver shall possess a waybill which includes the following:

1. Name of carrier and TCP number.
2. Vehicle license plate number.
3. Driver's name.
4. Name and address of person requesting or arranging the charter.
5. Time and date when charter was arranged.
6. Number of persons in the charter group.
7. Points of origination and destination.

The investigation disclosed that on and between May 1, 2002 and August 31, 2002, Ultimate Limousine failed to include all required information on its waybills (trip sheets). The follow-up investigation disclosed that between September 1, 2003 and October 15, 2003, Ultimate Limousine and Andy's Limousine failed to display all required information on its waybills (trip sheets).

CPSD alleges violations of G.O.157-C, Part 4.01, each offense subject to a \$5,000 fine.

I. Failed To Display TCP Number on Its For-Hire Vehicles

Pub. Util. Code Section 5385 requires charter-party carriers to display on every vehicle an identifying symbol in the form prescribed by the Commission. G.O.157-C, Part 4.06 provides in part, that the number assigned by the Commission to the carrier's authority shall be shown in full on all charter party vehicles, including the prefix "TCP", the authority number and the authority suffix "A", "B", "C", "S", "P" and/or "Z" (which designate Class "A" certificate, Class "B" certificate, Class "C" certificate, charter-party permit, round-trip sightseeing permit, and specialized carrier permit, respectively). The symbols shall be displayed on each side of the vehicle, EXCEPT vehicles designed to carry not more than 15 persons, including the driver, which shall display the identification symbol on the front and rear bumpers.

The follow-up investigation disclosed that between September 1, 2003 and October 15, 2003, Ultimate Limousine and Andy's Limousine failed to display its TCP number on at least five vehicles used in its for-hire operations.

Sections 5378(b) and 5415 authorize the Commission to impose a penalty of up to \$5,000 per violation. At 5 alleged violations, Respondents could be held jointly liable for a total fine of up to \$25,000.

IV. DISCUSSION

The requirements set forth in the Public Utilities Code for the operation of a charter-party business, as well as the rules which we have promulgated to implement those requirements, go in large part to the question of public safety. Moreover, we are concerned that this carrier continues to engage drivers without ensuring that they are validly licensed and tested for controlled substances. We are also concerned that the alleged violations of statutes and regulations documented by Staff have jeopardized public safety, and they could also demonstrate this carrier's lack of fitness to continue to conduct the transportation services for which he has obtained Commission authority.

In App. of Walter Hoffman ((1976) 80 Cal. P.U.C. 117) we said:

“...’reasonable fitness’ connotes more than mere adequacy or sufficiency in training, competency, or adaptability to the appropriate technical and vocational aspects of the service to be rendered. It also includes an element of moral trustworthiness, reliance, and dependability. The standards must be based on the interests of the public and distinguished from the interests of the applicant, and the burden rests with the applicant to demonstrate that he is reasonably fit to be entrusted with a renewal of Commission authority.”

After the issuance of a charter-party carrier permit, the Commission exercises continuing oversight of the carrier's fitness to operate. Pursuant to Pub. Util. Code Section 5381, the Commission has prescribed rules to ensure the safe operating performance of charter-party carriers and is authorized, pursuant to Pub. Util. Code Section 5378, at any

time for good cause to cancel, suspend, or revoke a permit or certificate. Good cause in Pub. Util. Code Section 5378(a),(1),(2) and (3) constitutes a failure to comply with the provisions of the Charter-Party Carriers' Act. A criminal act under the "Act" may also constitute good cause for revocation.

Therefore, we believe that Ultimate Limousine (PSG-11646-P) and Andy's Limousine (PSG-16218-B), and their officers, Andrew Richard Wagner (President) and Dannette Wagner (Vice-president), should appear and show cause why their operating authority should not be suspended or revoked. Good cause appearing, therefore,

IT IS ORDERED that:

1. An investigation on the Commission's own motion is hereby instituted into the operations and practices of Andy's Ultimate Limousines, Inc., a California Corporation, dba The Ultimate Limousine (Ultimate Limousine), A.L.S., a California Corporation dba Andy's Limousine Service Transportation (Andy's Limousine), and their officers, Andrew Richard Wagner (President) and Dannette Wagner (Vice-President), Respondents.
2. If the Respondents request it within 30 days after receiving this order, a public evidentiary hearing on this matter shall be held before an assigned Administrative Law Judge (ALJ) at a time and date as scheduled at the prehearing conference. At the evidentiary hearing, the Respondents will have an opportunity to present evidence and may contest the staff's allegations that Ultimate Limousine and Andy's Limousine have:
 - a. Violated Pub. Util. Code §5379 by conducting passenger charter party operations after the suspension of its Class P Charter Party Permit (TCP 11646-P);
 - b. Violated Pub. Util. Code §§ 5379, 5391 and GO 115-F, by failing to procure and maintain on file adequate public liability and property damage insurance, as required by law of all carriers;
 - c. Violated Pub. Util. Code § 5374 and G.O. 157-C, Part 10, by failing to enroll 41 employee drivers in a Mandatory Alcohol and Controlled Substance Testing Certification Program, and by failing to conduct pre-employment alcohol and controlled substance tests;

- d. Violated Pub. Util. Code § 5381, CVC Section 1808.1, and G.O. 157-C, Part 5.02, by failing to enroll 17 drivers in the Department of Motor Vehicles Pull Notice Program;
 - e. Violated G.O. 157-C, Part 5.01, and CVC Section 15250, by engaging 20 drivers that did not possess the proper California Driver License to drive carrier's vehicles with seating capacity greater than 10 passengers;
 - f. Violated Pub. Util. Code § G.O. 157-C, Part 4.01 by failing to report all vehicles in its for-hire operations (at least 4 vehicles with seating capacities of more than 15-passengers), and under-reporting the seating capacity of a fifth vehicle to the Commission;
 - g. Violated Pub. Util. Code § 5371 by operating at least 5 vehicles with seating capacities of more than 15-passengers, not authorized by its Charter-Party Permit issued pursuant to Section 5384(b);
 - h. Violated G.O. 157-C, Part 3.0, by failing to issue and maintain waybills showing all required information.
 - i. Violated Pub. Util. Code § 5385 and G.O. 157-C, Part 4.06 by failing to display their TCP number on at least five vehicles used in their for-hire operations.
 - j. Respondents should be fined up to \$5,000 per violation of the Pub. Util. Code under Pub. Util. Code §§ 5378(b) and 5415.
 - k. Respondents are unfit to continue to conduct charter-party passenger transportation service and whether the charter-party carrier permit and certificate should be suspended or revoked pursuant to Pub. Util. Code § 5378(a).
3. A hearing shall be held for the Respondents to show cause why their operating authorities should not be suspended for a term to be established or revoked. Not later than ten days prior to this hearing, Respondents shall provide counsel for Staff and the assigned Administrative Law Judge with the prepared testimony that they intend to advance at the hearing. At the hearing, the assigned Commissioner or Assigned ALJ will also determine whether there is sufficient evidence to issue an ex parte ruling ordering the immediate suspension of Respondents' charter-party carrier authorities.
4. The Staff shall continue discovery and continue to investigate the operations of Respondents. Additional information about the Respondents' compliance after issuance of this order will be relevant on the issue of the likelihood to be compliant with statute and

requirements that protect public safety. Additional information that Staff wishes to advance, as part of its direct showing in this proceeding, shall be provided to Respondents in advance of any hearings in accordance with the schedule directed by the Administrative Law Judge. Staff need only respond to discovery requests directed at Staff's investigation of the Respondents and Staff's prepared testimony offered in this proceeding.

5. Scoping Information: This ordering paragraph suffices for the "preliminary scoping memo" required by Rule 6 (c).

This enforcement proceeding is adjudicatory, and, absent settlement between staff and the respondent, will be set for evidentiary hearing. A hearing may also be held on any settlement for the purpose of enabling parties to justify that it is in the public interest or to answer questions from the ALJ about the settlement terms. A prehearing conference will be scheduled and held within 40 days and hearings will be held as soon as practicable thereafter in the Commission Los Angeles office. Objections to the OII may be filed but must be confined to jurisdictional issues, which could nullify any eventual Commission order on the merits of the issues about violations of statutes, rules, regulations or orders.

6. Respondents are hereby placed on notice that if staff's allegations are proven during the evidentiary hearing, the Commission may impose fines and penalties according to those authorized by law.

7. The Executive Director shall cause a copy of this order, the staff declarations and other related documents to be served by certified mail upon respondents, Andrew Richard Wagner, President Ultimate Limousine and Andy's Limousine at:

3131 Van Buren Blvd.
Riverside, CA 92503
909-687-1498

This order is effective today.

Dated July 8, 2004, in San Francisco, California

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners